

**IN THE OFFICE OF THE STATE ENGINEER
OF THE STATE OF NEVADA**

IN THE MATTER OF APPLICATION)
84621T FILED TO CHANGE THE POINT)
OF DIVERSION, PLACE AND MANNER)
OF USE OF A PORTION OF WATER)
PREVIOUSLY APPROPRIATED UNDER)
PERMIT 76113 WITHIN THE WILLOW)
CREEK VALLEY HYDROGRAPHIC)
BASIN (63), ELKO COUNTY, NEVADA.)

RULING

#6303

GENERAL

I.

Temporary Application 84621T was filed on December 24, 2014, by Klondex Midas Operations Inc., to change the point of diversion, place and manner of use of 115 acre-feet annually, a portion of water previously appropriated under Permit 76113. The proposed manner of use is for mining, milling and dewatering. The existing manner of use is for mining, milling and domestic purposes. The proposed point of diversion is described as being located within the NW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 27, T.39N., R.46E., M.D.B.&M, which is the exploration decline portal. The existing point of diversion is described as being located within the NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 3, T.38N., R.46E., M.D.B.&M. The proposed place of use is described as being located within the NW $\frac{1}{4}$, NE $\frac{1}{4}$, and the SE $\frac{1}{4}$ of Section 27, T.39N., R.46E., M.D.B.&M. The existing place of use is described as being Sections 3, 4, 9, 10, 15, 16, 21, 22, 27, 28, 33, and 34, T.39N., R.46E., M.D.B.&M.¹

II.

Application 84621T was protested by the Pershing County Water Conservation District of Nevada on the following grounds:¹

1. Granting of Application #84621T should be denied on the grounds that it seeks to change application #76113 which is also a temporary application which the State Engineer said would expire on December 31, 2016 and "All rights return back to the source". [sic] Also, Basin 63 is over appropriated.

¹ File No. 84621T, official records in the Office of the State Engineer.

FINDINGS OF FACT

I.

If the State Engineer determines that a temporary change of the place of diversion, manner of use or place of use of water already appropriated may not be in the public interest, or may impair the water rights held by other persons, the State Engineer shall give notice of the application as provided in NRS § 533.360 and hold a hearing and render a decision as provided for in NRS Chapter 533. The State Engineer finds that publication and a hearing on Temporary Application 84621T is not required.²

II.

Temporary Application 84621T was filed to change a portion of water previously appropriated under Permit 76113. Permit 76113 was issued on October 24, 2008, as a temporary allowance under the provisions of NRS § 533.371 for a finite period of time. Permit 76113 will expire on December 31, 2016, and all rights granted by the permit will revert back to the source upon the expiration of the permit. Temporary change Application 84621T may only be approved for a maximum of 1 year from the date the permit is issued; therefore, the State Engineer finds that the expiration date of Permit 76113 is beyond the one year period of time for which a temporary application can be approved for under NRS § 533.345.

III.

Application 84621T is not requesting a new appropriation of water. Rather, the application is seeking to temporarily change a portion of existing water right Permit 76113. The issue raised by the Protestant that the basin is over appropriated would be proper for the consideration of a new appropriation of water; however, in this case, the water is already appropriated and accounted for in the basin budget. The water could be pumped at its current location under Permit 76113 if the change application was denied or it could be pumped at its new location if the change application is approved. Under either scenario, the regional impact on the basin would be similar. The State Engineer finds that this application is a temporary change to an existing water right that is currently in good standing; therefore, there will be no additional draw on the basin.³

² NRS § 533.345(3).

³ File No. 76113, official records in the Office of the State Engineer.

CONCLUSIONS OF LAW

I.

The State Engineer has jurisdiction over the parties and the subject matter of this action and determination.⁴

II.

If an applicant is seeking a temporary change of place of diversion, manner of use or place of use of water already appropriated, the State Engineer shall approve the application if:⁵

- (a) The application is accompanied by the prescribed fees;
- (b) The temporary change is in the public interest; and
- (c) The temporary change does not impair the water rights held by other persons.

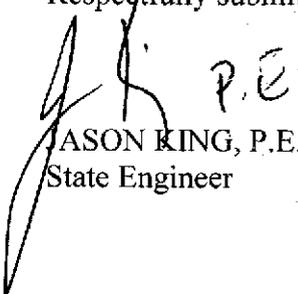
III.

The State Engineer concludes that with the approval of this temporary application, the expiration date will occur prior to the base right's expiration date, and no additional duty would be granted to the Applicant under the approval of this application. The State Engineer concludes that granting temporary change Application 84621T does not impair the water rights held by other persons and the application is in the public interest as it allows the Applicant to temporarily move water granted under the base right prior to the expiration of the base right.

RULING

The protest is overruled and Application 84621T is hereby approved subject to existing rights and the payment of the statutory permit fees.

Respectfully submitted,


JASON KING, P.E.
State Engineer

Dated this 27th day of
February, 2015.

⁴ NRS Chapters 533 and 534.

⁵ NRS § 533.345(2).